

Index of Withholdings
5 U.S.C § 552 (b)(4)
EPA-R4-2017-009519

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4	Letter to Ignacio Garin from Beverly H. Banister regarding Notice of Violation Dated: January 27, 2016	10	None Withholding Appendix A	Exemption 4
7	Letter to Mr. Steven P. Solow from Jeaneanne M. Gettle regarding Chevron USA, Inc., Pascagoula, Mississippi – Notice of General Duty Clause and Risk Management Program Violations Dated: October 20, 2016	5	None Full Withholding	Exemption 4
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#3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 07 2015

UPS & ELECTRONIC MAIL

Mr. Ignacio Garin
Manager Sulfur Derivatives
Akzo Nobel Functional Chemicals, LLC
525 West Van Buren Street
Chicago, Illinois 60607

Dear Mr. Garin:

Based upon information gathered by the U. S. Environmental Protection Agency, through on-site inspections, responses to information requests, and review of state files, it appears that Akzo Nobel Functional Chemicals, LLC, is not in compliance with Clean Air Act (CAA) requirements at its facility located at 13440 Highway 43 North, Axis, Alabama. Specifically, EPA is concerned about the Axis, Alabama facility's compliance with CAA Prevention of Significant Deterioration (PSD) requirements with respect to the projects of concern on Enclosure A. These projects concern physical changes and/or changes in the method of operation that resulted in emissions increases for the sulfuric acid plant at the Axis facility. The purpose of this letter is two-fold, to require Akzo Nobel to provide further information relating to the projects of concern, and second, to offer Akzo Nobel the opportunity to meet to discuss EPA's concerns relating to these projects.

Section 114(a) of the CAA, 42 U.S.C § 7414(a), authorizes the Administrator of the EPA to require any person who owns or operates an emission source, whom the Administrator believes may have information necessary for the purposes of Section 114(a), or who is subject to any requirement of the CAA, to provide such information as the Administrator may reasonably require for the purpose of carrying out any provision of the CAA. This authority has been duly delegated to the Director of the Air, Pesticides, and Toxics Management Division, Region 4.

Therefore, pursuant to Section 114(a), Akzo Nobel is directed to respond to the enclosed Information Request (Enclosure B) within thirty (30) days of receipt of this Section 114 Information Request. The EPA, for good cause shown, may extend the deadline for responding to the request. The response to the information requested must be accompanied by the enclosed Statement of Certification (Enclosure D), which is to be signed by a responsible official of Akzo Nobel. You should respond to this Information Request as completely as possible. The response must be delivered to the EPA or be postmarked no later than the above deadline. Send one complete copy of your response, including supporting documentation, to the following address:

Nikki Radford
Air Enforcement & Toxics Branch
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Under 40 C.F.R. Part 2, Subpart B, you may assert a business confidentiality claim covering part or all of the information you submit, other than emissions data and information or data that is otherwise publicly available, as described in 40 CFR 2.203(b). The page, paragraph, and sentence must be identified for any information subject to a claim of business confidentiality. If no business confidentiality claim accompanies the information when it is received by the EPA, the EPA may make the information available to the public without further notice. Enclosure C specifies the assertion and substantiation requirements for business confidentiality claims. Please note that if the EPA receives a Freedom of Information Act request for information you claim to be business confidential, or wants to determine whether such information is entitled confidential treatment, you will be required to bear the burden of substantiating your confidentiality claim. See 40 C.F.R. § 2.204(a) and (d). In those instances, you will be given an opportunity to submit comments on your claim by responding to 11 questions in Enclosure C. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to meet the requirements so as to be entitled to confidential treatment. Failure to submit your comments by the deadline in the letter will be regarded as a waiver of your confidentiality claim, and the EPA may release the information.

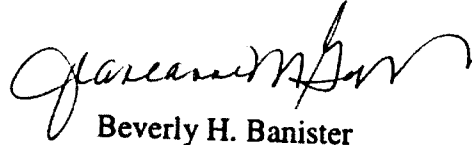
Failure to comply fully with this request for information is a violation of Section 114 of the CAA and could result in an enforcement action for the recovery of civil penalties not to exceed \$37,500 per day, per violation, or for injunctive relief or both. Section 113, 42 U.S.C. § 7413, of the CAA gives the EPA the authority to seek criminal penalties from any person who knowingly makes any false statement, representation, or certification in any report required under the CAA.

This request is not subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq., because it seeks collection of information from specific individuals or entities as part of an administrative action or investigation.

The second purpose of this letter is to offer Akzo Nobel an opportunity to meet and discuss the compliance issues identified in this letter, consistent with Region 4's longstanding practice. To ensure the effectiveness of the meeting, Akzo Nobel should come prepared to discuss all information it considered in developing emissions calculations and determining PSD applicability along with documentation to clarify the company's viewpoint. Please contact Nikki Radford, North Air Enforcement & Toxics Section at (404) 562-9099 within 14 days of receiving this letter if you would like to opportunity to meet with EPA. In addition, if you have any questions relating to this Information

Request, you may consult with Nikki Radford at (404) 562-9099 or by email at radford.nicole@epa.gov prior to the deadline for your response. Thank you for your cooperation in this matter.

Sincerely,



Beverly H. Banister

Director

Air, Pesticides & Toxics Management Division

cc: Mr. James A. Lofton
U. S. Department of Justice

Ms. Katherine Rahill
Akzo Nobel, Inc.

Mr. John Naron
Akzo Nobel Functional Chemicals, LLC

cc w/o Enclosure A: Ron Gore
Alabama Department of Environmental Management
Division for Air Quality

ENCLOSURE B INFORMATION REQUEST

For purposes of this information request, the definitions set forth in Section II shall apply and should be considered carefully by you in preparing your responses.

I. INSTRUCTIONS:

1. Please provide a separate narrative response to each question and subpart of a question set forth in this Information Request and precede each answer with the number of the question to which it corresponds.
2. If requested information or documents are not known or are not available to you at the time of your response to this Information Request, but later become known or available to you, you must supplement your response to the EPA. Moreover, should you find at any time after submission of your response that any portion is or becomes false, incomplete, or misrepresents the facts; you must provide the EPA with a corrected response as soon as possible.
3. Requested information can be submitted in electronic form if applicable.
4. Where specific information has not been memorialized in a document, but is nonetheless responsive to a Request, you must respond to the Request with a written response.
5. The information requested herein must be provided even though Akzo Nobel may contend that it includes possible confidential information or trade secrets. Please see Enclosure C for information on how to assert and substantiate a claim of business confidentiality. If no such claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to you.
6. If information responsive to this Information Request is not in your possession, custody or control, then identify the person from whom such information may be obtained.
7. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Information Request or who may be able to provide additional responsive documents, identify such persons and the additional information or documents that they may have.

II. DEFINITIONS:

1. The term "you" or "Akzo Nobel" shall include Akzo Nobel Functional Chemicals, LLC, its parent corporation(s) and subsidiaries, the addressees of this Request, and the officers, managers, employees, contractors, trustees, partners, successors, assigns, and agents of the above corporations.
2. "Facility" means all physical structures and equipment owned and/or operated by Akzo Nobel, located at 13440 Highway 43 North, Axis, Alabama.
3. "Sulfuric Acid Plant" means all physical structures and equipment at the Facility that are used to produce sulfuric acid.

4. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
5. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
6. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee(s) and/or recipient, and the substance or the subject matter.
7. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.
8. The term "document" means any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hard copy, including any form or format of these; including (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure, notation, annotation, or the like on it, (c) attachments to or enclosures with any document, and (d) every document referred to in any other document.

III. INFORMATION REQUEST:

You are hereby required, in accordance with Section 114(a) of the Act, 42 U.S.C. § 7414(a), to provide the following information for Akzo Nobel's Sulfuric Acid Plant in Axis, Alabama, to the extent you have not already provided it to Region 4.

1. With respect to project number 1 on Enclosure A:
 - A. Did you consider whether this project was subject to requirements of PSD, 42 U.S.C. § 7470-7479, and implementing regulations, before or during the project? If so, provide all documents related to this consideration.
 - B. Provide all emissions estimates/projections/calculations associated with this project;
 - C. Provide all documents relevant to the project's impact or potential impact on Sulfuric Acid Plant production;
 - D. Provide all documents relevant to problems with the equipment that was replaced;
 - E. Provide all documents relating to, and including, correspondence with Alabama Department of Environmental Management (ADEM), concerning this project, including calculations and project descriptions shared with ADEM;
 - F. Describe, and provide all documents relating to, the potential emissions changes in sulfur dioxide, sulfur trioxide and sulfuric acid mist (SO₂, SO₃ and H₂SO₄, respectively) as a result of the project; and
 - G. Describe, and provide all documents relating to, actual emission changes in SO₂, SO₃ and H₂SO₄ after the project.

after the project.

2. With respect to project number 2 on Enclosure A:

- A. Did you consider whether this project was subject to requirements of PSD, 42 U.S.C. § 7470-7479, and implementing regulations? If so, provide all documents associated with such review.
- B. Provide all emissions estimates/projections/calculations associated with this project, including all information you considered relevant in developing such emissions estimates/projections/calculations;
- C. Provide all documents relating to, and including, correspondence with ADEM concerning this project, including calculations and project descriptions shared with ADEM;
- D. Provide all documents relevant to the project's impact or potential impact on Sulfuric Acid Plant production;
- E. Provide all SO₂ modeling and ambient monitoring data for the Sulfuric Acid Plant and/or the Axis Facility;
- F. Provide daily acid production data from February 12, 2013, to the present. Please, provide this information in electronic format that may be edited by a spreadsheet program such as Microsoft Excel;
- G. Provide monthly acid production data from March 2013 to the present. Please, provide this information in electronic format that may be edited by a spreadsheet program such as Microsoft Excel;
- H. Provide SO₂ emissions data in tons on a monthly basis from March 2013 until the present. Please, provide this information in electronic format that may be edited by a spreadsheet program such as Microsoft Excel;
- I. Provide all recent stack test results from March 2013 until the present;
- J. Provide the hourly measurement of each parameter monitored by the Continuous Emissions Monitoring system each day since February 19, 2013. Please provide this information in an electronic format that may be edited by a spreadsheet program such as Microsoft Excel or comparable software;
- K. Describe, and provide all documents related to, emission of SO₂, SO₃ and H₂SO₄ after the project;
- L. Provide all forecasts/estimates/projections of sulfuric acid sales from 2003 forward; and,
- M. Provide all forecasts/estimates/projections of sulfuric acid production from 2003 forward.

ENCLOSURE C
CONFIDENTIAL BUSINESS INFORMATION (CBI)

Assertion and Substantiation Requirements

I. ASSERTION REQUIREMENTS

You may assert a business confidentiality claim covering part or all of the information you submit, other than emissions data and information or data that is otherwise publicly available, as described in 40 CFR 2.203(b). If no business confidentiality claim accompanies the information when it is received by EPA, EPA may make the information available to the public without further notice. To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document over which you make a claim of confidentiality should be marked by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "business confidential" and a date if any when the information should no longer be treated as confidential. **You must be specific by page, paragraph, and sentence when identifying the information subject to your claim.** Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. Information covered by such a claim will be disclosed by the EPA only to the extent permitted and by means of the procedures set forth by Section 114(c) of the Clean Air Act (the Act), and 40 C.F.R. Part 2, Subpart B. The EPA will construe the failure to furnish a confidentiality claim with your response to the attached letter as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as "Personal Privacy Information" given that disclosure of such information to the general public may constitute an invasion of privacy.

II. SUBSTANTIATION REQUIREMENTS

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. Part 2, Subpart B. You bear the burden of substantiating your confidentiality claim and must satisfactorily show that disclosure of the information would be likely to cause substantial harm to your business' competitive position; that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; and that the information is not and has not been reasonably obtainable by legitimate means without your consent, among other things. Conclusory allegations will be given little or no weight.

Before EPA makes a final determination regarding your claim of confidentiality, pursuant to 40 C.F.R. Part 2, Subpart B, EPA will send you a letter asking you to substantiate fully your CBI claim by answering 11 questions. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to meet the requirements so as to be entitled to confidential treatment. You must provide EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information.

EPA will ask you to specify which portions of the information you consider confidential. You must be specific by page, paragraph, and sentence when identifying the information subject to your claim. Please note that if a page, document, group or class of documents claimed by you to be confidential contains a significant amount of information which the EPA determines is not confidential, your confidentiality claim regarding that page, document, group or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim may be disclosed without further notice to you. For each item or class of information that you identify as being confidential, EPA will ask you to answer the following questions, giving as much detail as possible, as conclusory allegations will be given little or no weight in EPA's determination:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.
5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
7. For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.
9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

10. If you believe any information to be (a) trade secret (s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret (s).
11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

Please note that emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2. "Emission data" means, with reference to any source of emission of any substance into the air - (A) information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing; (B) information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner and rate of operation of the source); and (C) a general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source). 40 C.F.R. §§ 2.301(a)(2)(i)(A), (B) and (C).

Information designated confidential will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.

ENCLOSURE D

This is to be signed and dated by a responsible official of Akzo Nobel.

STATEMENT OF CERTIFICATION

I hereby certify that the foregoing responses and information provided to the EPA in response to its Clean Air Act, Section 114, Information Request were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information or that I consulted with individuals having personal knowledge (note, please identify such individuals). I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

Signature and Date

Printed Name and Title

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

UNITED PARCEL SERVICE

MAR 07 2014

Gregory Dowler, Director
Environmental, Health & Safety
Ardagh Glass Inc.
401 East Jackson Street
Suite 2800
Tampa, Florida 33602

Re: Notice of Violation

Dear Mr. Dowler:

Enclosed is a Notice of Violation (NOV) issued to Ardagh Glass Inc. (Ardagh), under Sections 113(a) of the Clean Air Act, 42 U.S.C. §§ 7413(a). In this NOV, the U.S. Environmental Protection Agency notifies Ardagh of violations of the Prevention of Significant Deterioration provisions under the Clean Air Act and the Georgia State Implementation Plan at its Warner Robins, Georgia, facility.

Please note the opportunity to confer provided in the NOV. Questions may be directed to Bonnie Sawyer at (404) 562-9539.

Sincerely,

A handwritten signature in cursive script that reads "Carol G. Kemker for".

Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division

Enclosure

cc: Karen Hays, GA EPD
Richard S. Wiedman (via United Parcel Service and email)
Esperanza Anderson, DOJ

**United States Environmental Protection Agency
Region 4 - Atlanta, Georgia**

In the matter of:

Ardagh Glass Inc.,

Warner Robins, Georgia

Clean Air Act

Notice of Violation

NOTICE OF VIOLATION

This Notice of Violation (NOV) is issued pursuant to Section 113 of the Clean Air Act (CAA or the Act), as amended, 42 U.S.C. § 7413, to Ardagh Glass, Inc. (hereinafter referred to as "Ardagh," "Company", or "Respondent") for violations of the CAA at its facility located at 1044 Booth Road, Warner Robins, Houston County, Georgia (Facility). Section 113 requires the Administrator of the U.S. Environmental Protection Agency to notify a person that has violated a requirement of the applicable state implementation plan (SIP) or permit of such finding of the violation. The authority to issue NOVs has been delegated to the Director of the Air, Pesticides, and Toxics Management Division, EPA, Region 4.

STATUTORY AND REGULATORY BACKGROUND

1. The CAA is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).
 - A. The National Ambient Air Quality Standards
2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified carbon monoxide (CO), lead, nitrogen oxides (NO_x), sulfur dioxide (SO₂), ozone, and particulate matter as criteria pollutants, and has promulgated NAAQS for such pollutants. 40 C.F.R. Part 50.
4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a “nonattainment” area with respect to such pollutant.
5. An area that cannot be classified as either “attainment” or “nonattainment” with respect to a particular pollutant due to insufficient data is termed “unclassifiable” with respect to such pollutant.
6. At all times relevant to this NOV, Houston County, the area in which the Facility is located, has been classified as either attainment or unclassifiable for all criteria pollutants.

B. Prevention of Significant Deterioration Regulations

7. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the “PSD program.”
8. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165, including that the facility is subject to the best available control technology (BACT) and and must demonstrate that emissions from the construction or operation would not have adverse air quality impacts.
9. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines a “major emitting facility,” in pertinent part, as a source that emits or has the potential to emit 250 tons per year or more of any pollutant.

10. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" to include "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."
11. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt, and submit to EPA for approval, a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.
12. EPA has promulgated two largely identical sets of regulations to implement the PSD program. One set, found at 40 C.F.R. § 52.21, contains EPA's own federal PSD program, which applies in areas without an EPA-approved PSD program in the relevant SIP. The other set of regulations, found at 40 CFR § 51.166, contains requirements that state PSD programs must meet to be approved as part of a SIP.
13. Georgia administers a PSD program, which has been approved by EPA and is part of the Georgia SIP at Ga. Comp. R. & Regs. R. 391-3-1-.02(7). In large part, Georgia's PSD program incorporates by reference the federal PSD requirements in 40 C.F.R. § 52.21.
14. The Georgia PSD regulations were originally approved by EPA into the Georgia SIP effective March 12, 1982. 47 Fed. Reg. 6,017 (Feb. 10, 1982). EPA approved revisions to the PSD portion of Georgia's SIP, effective August 10, 1992 (57 Fed. Reg. 24,371, June 9, 1992), and April 2, 1996 (61 Fed. Reg. 3,817, Feb. 2, 1996). The version of the Georgia SIP applicable to this NOV is the version that existed based on the revisions approved by EPA on February 2, 1996. With Georgia's SIP submittals described above, Georgia largely incorporated the federal PSD regulations, 40 C.F.R. § 52.21, as amended through October 1994, into its SIP.
15. EPA also previously approved construction and operation permit rules into Georgia's SIP at Ga. Comp. R. & Regs. R. 391-3-1-.03(1)(a) and (2)(a), (41 Fed. Reg. 35,184, Aug. 20, 1976).
16. The Georgia regulations and federal PSD regulations referenced herein were incorporated into and were a part of the Georgia SIP at the time of the major modifications alleged in this NOV. All citations to regulations herein refer to the provisions of the Georgia SIP and the federal regulations incorporated therein - that were applicable at the time of the major modifications alleged herein.

17. Georgia's PSD regulations apply in areas designated as attainment or unclassifiable, to any source, and the owner or operator of any source, subject to regulation under 40 C.F.R. § 52.21. Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(1).
18. Georgia's PSD regulations incorporate the definitions contained in 40 C.F.R. § 52.21(b). Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(2).
19. "Major stationary source" is defined in part as "any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act." Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(2); 40 C.F.R. § 52.21(b)(1)(i)(b).
20. "Major modification" is defined as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(2); 40 C.F.R. § 52.21(b)(2)(i).
21. "Net emissions increase" means the amount by which the sum of the following exceeds zero: "[a]ny increase in actual emissions from a particular physical change or change in method of operation at a stationary source" and "[a]ny other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable." Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(2); 40 C.F.R. § 52.21(b)(3)(i).
22. "Significant" net emissions increase means an increase in the rate of emissions that would equal or exceed any of the following rates for the following pollutants: 40 tons per year of NO_x and 40 tons per year of SO₂. Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(2); 40 C.F.R. § 52.21(b)(23)(i).
23. "Actual emissions" as of a particular date is defined as the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. For any emission unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(2); 40 C.F.R. § 52.21(b)(21).
24. "Potential to emit" is defined as "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect

it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.” Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(2); 40 C.F.R. § 52.21(b)(4).

25. “Construction” means “any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.” Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(2); 40 C.F.R. § 52.21(b)(8); see also 42 U.S.C. § 7479(2)(C) (“construction” includes “modification” (as defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a)) of any source or facility).
26. “Best available control technology” means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Act which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(2); 40 C.F.R. § 52.21(b)(12).
27. Georgia’s SIP decrees that “[n]o person shall construct or operate any facility from which air contaminants are or may be emitted in such a manner as to fail to comply with: . . . [a]ny applicable increment, precondition for permit, or other requirement established for the Prevention of Significant Deterioration pursuant to Part C, Title I of the Federal Act. (Ga. Comp. R. & Regs. R. 391-3-1-.02(1)(c)); no major stationary source or major modification shall begin actual construction unless, at a minimum, the requirements in 40 C.F.R. § 52.21(j) through (r)(5) have been met (Ga. Comp. R. & Regs. R. 391-3-1-.02(7)(a)(3)); and no permit to construct a new stationary source or modify an existing stationary source shall be issued unless such proposed source meets all the requirements for review and for obtaining a permit prescribed in Title I, Part C of the Federal Act, and Section 391-3-1-.02(7) of these Rules, (Ga. Comp. R. & Regs. R. 391-3-1-.03(8)(b)). One of the requirements captured in these SIP provisions is 40 C.F.R. § 52.21(j), which provides that a “major modification shall apply best available control technology for each pollutant subject to regulation under the Act for which it would be a significant net emissions increase at the source.” Some other of these requirements include, but are not limited to, a source impact analysis (40 C.F.R. § 52.21(k)) and performance of air quality analysis (40 C.F.R. § 52.21(m)) to demonstrate that the modification would not cause or contribute to a violation of the NAAQS.

28. Any owner or operator of a source subject to the aforementioned requirements, who constructs or operates a modified source not in accordance with the requirements of the PSD program or commences construction without applying for and receiving approval under the aforementioned requirements, is subject to an enforcement action under Section 113 of the CAA. 42 U.S.C. §7413.

FACTUAL BACKGROUND

29. Ardagh Glass Inc. (formerly named Anchor Glass Container Corporation), is a Delaware corporation that owns and operates a glass manufacturing facility in Warner Robins, Houston County, Georgia (Facility). Ardagh Glass Inc. is the Respondent.
30. Respondent is a "person" within the meaning of sections 113(a) and 502 of the CAA, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).
31. The Facility originally commenced operation in 1976 with two glass melting furnaces, referred to as Furnace 1 and Furnace 2. The furnaces are heated by using a combination of natural gas and electric heat.
32. The Facility is a major stationary source for CAA New Source Review purposes because the Facility has the potential to emit the following criteria pollutants in excess of 250 tons per year: nitrogen oxides (NO_x), sulfur dioxide (SO₂), and particulate matter (PM).
33. At all relevant times, Houston County is and has been designated as either attainment or unclassifiable for all criteria pollutants. See 40 C.F.R. § 81.311.
34. Ardagh's Facility is subject to Title V and its initial Title V permit application was submitted on October 21, 1996. A draft permit was issued on January 31, 2001, and its initial final permit was issued by Georgia Environmental Protection Division (EPD) on July 9, 2001, (No. 3221-153-0014-V-02-0). Ardagh's Title V permit has since been modified and renewed. The Title V permit (No. 3221-153-0014-V-03-0) expired on September 11, 2011, and EPD received a timely application for a renewal of the Title V permit on March 11, 2011. The corresponding permit (No. 3221-153-0014-V-04-0) was issued on October 16, 2012. The current permit (No. 3221-153-0014-V-05-0) was issued on December 13, 2012, and expires on October 16, 2017.
35. By two separate information request letters issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated September 19, 2006, and

April 28, 2011, EPA required Respondent to submit specific information regarding the Facility. Respondent replied to EPA's Section 114 information requests with five separate submittals on November 14, 2006; November 29, 2006; December 15, 2006; June 13, 2011; and July 28, 2011.

(1) 1998 Rebuild Project - Furnace 1

36. (b)(4) Trade Secrets



37. The project described in paragraph 36 was a physical change that resulted in significant net emissions increases of NOx and SO2.

FINDING OF VIOLATIONS

38. Upon review of the information provided by Respondent, referenced above, EPA Region 4 has concluded that the activities described above constitute a major modification that resulted in a significant net emissions increase of NOx and SO2 within the meaning of the Clean Air Act, and Ga. Comp. R. & Regs. R. 391-3-1-.02(7).
39. Ardagh failed to apply for or obtain a PSD permit prior to commencing construction of such activities. Ardagh violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Ga. Comp. R. & Regs. R. 391-3-1-.02(1)(c) and (7), by commencing construction of, and continuing to operate the modified Facility without applying for and obtaining a PSD permit. Ardagh violated, and continues to violate 42 U.S.C. § 7475(a), Ga. Comp. R. & Regs. R. 391-3-1-.02(1)(c) and (7), by failing to install BACT for the control of NOx and SO2 prior to commencing construction of such modification, and by continuing to operate its Facility without meeting BACT for SO2 and NOx.

ENFORCEMENT PROVISIONS

40. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, the PSD requirements of Sections 110 or 165(a) of the Act, 42

U.S.C. §§ 7410, 7475(a); or any rule or permit issued thereunder; or the PSD provisions of the Georgia SIP. *See also*, 40 C.F.R. § 52.23.

41. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 through March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009), against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.
42. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

OPPORTUNITY FOR CONFERENCE

Respondent is hereby offered an opportunity for a conference with EPA. The conference will enable Respondent to present evidence bearing on the violations, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. EPA intends to have counsel at any conference requested. Respondent may also chose to be represented by legal counsel.

A request for a conference must be made within ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

Bonnie Sawyer
Office of Environmental Accountability
U.S. Environmental Protection Agency – Region 4
61 Forsyth St. SW
Atlanta, Georgia 30303
sawyer.bonnie @epa.gov

If you have any questions, please feel free to call Ms. Sawyer at (404) 562-9539.


Beverly H. Banister

Director

Air, Pesticides and Toxics
Management Division

3/7/14
Date

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN 27 2016

UNITED PARCEL SERVICE

Ignacio Garin, Manager Sulfur Derivatives
Akzo Nobel Functional Chemicals, LLC
525 West Van Buren Street
Chicago, Illinois 60607

RE: Notice of Violation

Dear Mr. Garin:

Enclosed is a Notice of Violation (NOV) issued to Akzo Nobel Functional Chemicals, LLC (Akzo Nobel) under Section 113(a)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(1). In the NOV, the United States Environmental Protection Agency notifies Akzo Nobel of violations of the CAA Prevention of Significant Deterioration program and the Alabama state implementation plan at the sulfuric acid plant at Akzo Nobel's LeMoyne facility located in Axis, Alabama.

Please note the opportunity to confer outlined in the NOV. As indicated in the NOV, any requests to confer should be directed to Valerie Nowell, Senior Attorney for Clean Air Act Enforcement, at nowell.valerie@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Beverly H. Banister".

Beverly H. Banister
Director

Air, Pesticides and Toxics Management Division

Enclosure

cc: Ron Gore, Air Division Director, ADEM (w/o Appendix A)
Eric Boyd, Thompson Coburn LLP
Katherine Rahill, Akzo Nobel

IN THE MATTER OF:

Notice of Violation

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of the EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such “criteria” pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires the EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.
3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, the EPA has identified carbon monoxide, lead, nitrogen oxides, sulfur dioxide (SO₂), ozone, and particulate matter

as criteria pollutants, and has promulgated NAAQS for such pollutants. 40 C.F.R. Part 50.

4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a "nonattainment" area with respect to such pollutant.
5. An area that cannot be classified as either "attainment" or "nonattainment" with respect to a particular pollutant due to insufficient data is termed "unclassifiable" with respect to such pollutant.
6. Mobile County, the area in which Akzo Nobel's sulfuric acid plant is located, has been classified as either attainment or unclassifiable for all criteria pollutants up to the time of issuance of this NOV. See 40 C.F.R. § 81.301.

Prevention of Significant Deterioration

7. Areas designated attainment or unclassifiable are subject to the CAA's Prevention of Significant Deterioration (PSD) requirements.
8. Most of the Act's PSD provisions are contained in Section 165(a) of the Act, 42 U.S.C. § 7475(a), which provides that no major emitting facility shall make a physical change or change in the method of operation that increases the amount of any air pollutant emitted, unless eight listed requirements are met, including issuance of a pre-construction permit imposing best available control technology emission limitations, among other things. 42 U.S.C. §§ 7475(a)(cross-referencing 7479(2)(C) and 7411(a)(4)). Specifically, Section 165(a) of the CAA, 42 U.S.C. § 7475(a), provides that:

No major emitting facility on which construction [defined to include modification as defined in Section 111(a)] is commenced after August 7, 1977, may be constructed in any area to which this part applies unless ----

(1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part;

(2) the required analysis has been conducted in accordance with regulations promulgated by the Administrator, and a public hearing has been held . . .

(3) the owner or operator of such facility demonstrates . . . that emissions from construction or operation of such facility will not

cause, or contribute to, air pollution in excess of any [increment or NAAQS] . . .

(4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility;

(5) the provisions of subsection (d) of this section with respect to protection of class I areas have been complied with for such facility;

(6) there has been an analysis of any air quality impacts . . .

(7) the person who owns or operates . . . agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality . . .

(8) [in certain cases, the Administrator has approved the BACT determination].

9. The term "construction" includes "modification" as that term is defined in Section 111(a). 42 U.S.C. § 7479. Section 111(a) defines the term "modification" as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." CAA §§ 111(a)(4) and 169(2)(C), 42 U.S.C. §§ 7411(a)(4) and 7479(2)(C).
10. A "major emitting facility" is defined, in pertinent part, as (1) 28 identified source categories which emit, or have the potential to emit, 100 tons per year (tpy) or more of any air pollutant, and (2) any other source not listed among the 28 source categories with the potential to emit 250 tpy or more of any air pollutant. 42 U.S.C. § 7479(1). Sulfuric acid facilities are one of the 28 listed source categories, so the 100 tpy threshold applies. Akzo Nobel's sulfuric acid plant has the potential to emit 4,188 tpy of SO₂, well above the 100 tpy threshold and is a major emitting facility.
11. States must develop state implementation plans (SIPs) that are approved by the EPA that contain enforceable emission limitations and other control measures as may be necessary to meet CAA requirements including PSD. 42 U.S.C. §§ 7410(a), 7471 and 7465. SIPs must include a PSD permit program to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable. 42 U.S.C. §§ 7410(a), 7471 and 7465. Once the EPA approves provisions into a state's SIP, those provisions become federally enforceable and the EPA has authority to enforce the state or local requirements. 42 U.S.C. §§ 7410 and 7413(a)(1).
12. The EPA has promulgated two largely identical sets of regulations to implement the PSD program. One set, found at 40 C.F.R. § 52.21, contains the EPA's own federal PSD

program, which applies in areas without an EPA approved PSD program in the relevant SIP. The other set of regulations, found at 40 CFR § 51.166, contains requirements that state PSD programs must meet to be approved as part of a SIP.

13. Alabama administers an EPA approved PSD program that is part of the Alabama SIP at Ala. Admin. Code r. 335-3-14-.04.
14. The EPA first approved Alabama's PSD program as part of the Alabama SIP on November 10, 1981 (46 Fed. Reg. 55517). This approval became effective on December 10, 1981. Since the EPA's initial approval in 1981, the Alabama PSD SIP rules were revised a number of times before the major modification at issue in this NOV. See 40 CFR § 52.50 (2013). The last PSD SIP revision before the major modification at issue in this NOV was submitted by ADEM to the EPA on April 22, 1999, approved by the EPA on November 3, 1999, and became effective on January 3, 2000. (64 Fed. Reg. 59633). All references in this NOV to the PSD regulations and the Ala. Admin. Code are references to the version in effect at the time of the major modification at issue in this NOV.
15. Alabama's PSD regulations apply to any new major stationary source or any major modification at an existing major stationary source that commences construction after December 10, 1981, and is located in an area designated as attainment or unclassifiable.
16. The PSD regulations set forth in Ala. Admin. Code r. 335-3-14-.04 apply to an existing "major stationary source" in an attainment or unclassifiable area that intends to construct a "major modification." Ala. Admin. Code r. 335-3-14-.04(8).
17. Under the PSD regulations, "major stationary source" is defined to include sulfuric acid plants which emit or have the potential to emit 100 tpy or more of any regulated air pollutant. Ala. Admin. Code r. 335-3-14-.04(2)(a)(1).
18. Under the PSD regulations, "major modification" is defined as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the CAA. Ala. Admin. Code r. 335-3-14-.04(2)(b).
19. Under the PSD regulations, "net emissions increase" means the amount by which the sum of the following exceeds zero: "any increase in actual emissions from a particular physical change or change in method of operation at a stationary source" and "any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable." Ala. Admin. Code r. 335-3-14-.04(2)(c).
20. Under the PSD regulations, a "significant" net emissions increase means an increase in the rate of emissions that would equal or exceed 40 tons per year of SO₂, or any of the rates listed in Ala. Admin. Code r. 335-3-14-.04(2)(w).
21. The PSD regulations define "actual emissions" on any given date as the average rate, in

tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the given date and which is representative of normal operation. Ala. Admin. Code r. 335-3-14-.04(2)(u)(1). In addition, for any emissions unit that has not begun normal operations on the given date, actual emissions shall equal the potential to emit of the unit on that date. Ala. Admin. Code r. 335-3-14-.04(2)(u)(3).

22. The PSD regulations define "potential to emit" as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. Ala. Admin. Code r. 335-3-14-.04(2)(d).
23. Under the PSD regulations, "construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions. Ala. Admin. Code r. 335-3-14-.04(2)(h); see 42 U.S.C. § 7479(2)(C) ("construction" includes "modification" as defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a) of any source or facility).
24. No major stationary source or major modification shall begin actual construction unless, at a minimum, requirements contained in paragraphs (9) through (17) of Rule 335-3-14-.04, have been met, including, among other things the source demonstrates emissions will not cause or contribute to air pollution in violation of any NAAQS, the modification meets Best Available Control Technology (BACT) emission limits, and meaningful public participation in the process has been provided. Ala. Admin. Code r. 335-3-14-.04(8) – (17).
25. Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree of reduction achievable for each pollutant subject to regulation under the CAA which would be emitted from the major modification taking into account energy, environmental, and economic impacts and other costs. Ala. Admin. Code r. 335-3-14-.04(2)(l).
26. Rule 335-3-14-.01 of the Alabama SIP, entitled "Air Permit" was approved by the EPA into the Alabama SIP, effective October 28, 1985. (50 Fed. Reg. 34804).
27. The Alabama SIP "Air Permit" rule requires sources to apply for an "Air Permit" prior to building, altering or replacing any article, machine, equipment or other contrivance – the use of which may cause the issuance of air contaminants, stating:

Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the

use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction. Ala. Admin. Code r. 335-3-14-.01(1)(a).

28. The Alabama SIP "Air Permit" rule also requires sources to obtain an "Air Permit" prior to operating or using any such article, machine, equipment or other contrivance that was built, erected, altered or replaced, as described in the preceding paragraph. The "Air Permit" rule states:

Before any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph may be operated or used, authorization shall be obtained from the Director in the form of an Air Permit. No permit shall be granted for any article, machine, equipment or contrivance described in subparagraph (a) of this paragraph, constructed or installed without notification as required by subparagraph (a) of this paragraph, until the information required is presented to the Director and such article, machine, equipment or contrivance is altered, if necessary, and made to conform to the standards established by the Department. Ala. Admin. Code r. 335-3-14-.01(1)(b).

29. If a source operates any article, machine, equipment or other contrivance without first obtaining the required "Air Permit," the source may continue to operate only if the source obtains an Air Permit. The Alabama SIP "Air Permit" rule states:

Any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph which is presently operating (or which is not presently operating but which is capable of being operated) without an Air Permit may continue to operate (or may restart) only if its owner or operator obtains an Air Permit prior to a date to be set by the Director (or prior to restarting). Ala. Admin. Code r. 335-3-14-.01(1)(c).

FACTUAL BACKGROUND

30. Akzo Nobel is a corporation which owns and operates a sulfuric acid plant in Axis, Mobile County, Alabama.

31. Akzo Nobel is a person within the meaning of sections 113 and 302(e) of the CAA, 42 U.S.C. §§ 7413(a) and 7602(e).
32. Akzo Nobel's sulfuric acid plant has the potential to emit 4,188 tpy of SO₂, well above the 100 tpy threshold in Sections 169 and 302(j) of the Act, 42 U.S.C. §§ 7479(1) and 7602(j). Akzo Nobel's sulfuric acid plant is a major emitting facility and a major stationary source under Sections 165, 169 and 302(j) of the Act, 42 U.S.C. §§ 7475, 7479 and 7602(j).
33. Akzo Nobel's sulfuric acid plant is subject to the CAA PSD program since Mobile County, the area in which Akzo Nobel's sulfuric acid plant is located, has been classified as either attainment or unclassifiable for all criteria pollutants up to the time of issuance of this NOV. See 40 C.F.R. § 81.301.
34. The EPA required Akzo Nobel to submit specific information regarding the sulfuric acid plant and the LeMoyne facility by three separate information request letters issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated May 24, 2011, February 11, 2013, and April 7, 2015. Akzo Nobel replied to the EPA's three Section 114 information requests with seven separate submittals on July 11, 2011, August 9, 2011, September 18, 2011, October 6, 2011, April 5, 2013, May 7, 2015 and June 5, 2015.
 - a. Akzo Nobel asserted that information it provided the EPA is confidential business information; thus, the EPA is treating the information as such until a final determination has been made.
35. Akzo Nobel performed a major modification at its sulfuric acid plant, as explained in more detail in Appendix A. Appendix A contains information Akzo Nobel asserted to be confidential business information.

FINDINGS OF VIOLATIONS

Upon review of information provided by Akzo Nobel and other information available to the EPA, the EPA Region 4 finds:

36. Akzo Nobel performed a physical change and/or change in the method of operation at its sulfuric acid plant which increased the amount of SO₂ emitted, without undertaking the eight requirements listed in Section 165(a) of the Act, 42 U.S.C. § 7475(a). These eight requirements are summarized in Paragraph 8 of this NOV. Akzo Nobel violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a). The physical change and/or change in the method of operation is described in Appendix A.
37. Akzo Nobel performed a physical change and/or change in the method of operation at its sulfuric acid plant which resulted in a significant net emissions increase of SO₂, without undertaking the requirements contained in paragraphs (9) through (17) of Ala. Admin. Code r 335-3-14-.04. These requirements include, among other things, demonstrating that

emissions will not cause or contribute to air pollution in violation of any NAAQS, meeting BACT emission limits, and providing meaningful public participation in the process. Ala. Admin. Code r. 335-3-14-.04(8) – (17). The physical change and/or change in the method of operation is described in Appendix A. Akzo Nobel should have expected the activities described in Appendix A would result in a significant net emissions increase of SO₂ under the Alabama SIP in effect at the time, and in fact, the activities actually resulted in a significant net emissions increase of SO₂. Akzo Nobel violated and continues to violate Ala. Admin. Code r. 335-3-14-.04(8).

38. As described in Appendix A, Akzo Nobel built, erected, altered, and/or replaced an article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, within the meaning of Ala. Admin. Code r. 335-3-14-.01(1)(a). Akzo Nobel did not submit an application for an “Air Permit” under Ala. Admin. Code r. 335-3-14-.01(1)(a) at any time before, during or after performing the activities described in Appendix A. Akzo Nobel violated and continues to violate Ala. Admin. Code r. 335-3-14-.01(1)(a).

39. After performing the activities described in Appendix A, Akzo Nobel operated and/or used an article, machine, equipment, or other contrivance described in Appendix A, without obtaining authorization in the form of an “Air Permit.” Akzo Nobel violated and continues to violate Ala. Admin. Code r. 335-3-14-.01(1)(b).

40. Akzo Nobel is presently operating an article, machine, equipment, or other contrivance described in Appendix A without an “Air Permit.” Akzo Nobel violated and continues to violate Ala. Admin. Code r. 335-3-14-.01(1)(c).

ENFORCEMENT

Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Administrator may issue an order requiring compliance with the requirements of the state implementation plan or permit, and/or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation on or before January 30, 1997, no more than \$27,500 per day for each violation between January 31, 1997, and March 14, 2004, no more than \$32,500 per day for each violation between March 15, 2004, and January 12, 2009, and no more than \$37,500 per day for each violation after January 12, 2009.

OPPORTUNITY FOR CONFERENCE

Akzo Nobel is hereby offered an opportunity for a conference with the EPA. The conference will enable Akzo Nobel to present evidence bearing on the violations, on the nature of violations, and on any efforts it may have taken or proposes to take to achieve compliance. The EPA may have legal counsel at any conference requested. Akzo Nobel may also choose to be represented by legal counsel.

A request for a conference must be made within ten (10) days of receipt of this NOV, and the request for a conference should be made in writing to:

Valerie Nowell
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 4
61 Forsyth St. SW
Atlanta, Georgia 30303
nowell.valerie@epa.gov

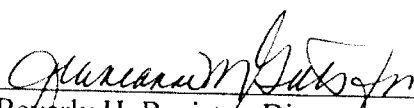
If you have any questions, please feel free to call Ms. Nowell at (404) 562-9555.

This NOV is effective upon issuance.

ISSUED:

1-26-15

Date


Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division